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8 THE UNITED STATES BANKRUPTCY COURT  
9  
10 FOR THE SOUTHERN DISTRICT OF NEW YORK

11 In re: CELSIUS NETWORK LLC, et. al., Debtors. } Case No. \_\_\_\_\_  
12 } Related Case: 22-10964  
13 } Chapter 11  
14 JASON VOELKER, Derivatively on behalf of iCAPITAL MANAGEMENT INC., a } **NOMINAL PLAINTIFF'S FINAL  
BRIEF IN REPLY TO CELSIUS'  
OBJECTION TO THE MOTION FOR  
LEAVE TO FILE VERIFIED  
ADVERSARY COMPLAINT**  
15 Wyoming Corporation, and as a Direct Party, }  
16  
17 Plaintiffs, } Date: May 7, 2024  
18 v. } Time: 2:00 p.m. EST  
19 CELSIUS NETWORK LLC, CELSIUS } Place: Room 523  
20 LENDING LLC, IONIC DIGITAL INC., and } Honorable Martin Glenn, Chief United  
21 FAHRENHEIT LLC, a Delaware Limited } States Bankruptcy Judge  
22 Liability Company, }  
23

24 **NOMINAL PLAINTIFF'S FINAL BRIEF IN REPLY TO CELSIUS' OBJECTION TO  
25 THE MOTION FOR LEAVE TO FILE VERIFIED ADVERSARY COMPLAINT**

1                   **Introduction**

2                   Jason Voelker, a derivative shareholder of iCapital Management Inc. ("iCapital"),  
3 respectfully submits this Reply underscoring the compelling legal and factual basis for granting  
4 iCapital's Motion for Leave to File an Adversary Complaint. Celsius Network LLC et al.'s  
5 ("Celsius" or "Debtors") opposition rests on a calculated disregard for Wyoming law, the  
6 governing jurisdiction for the meticulously crafted Escrow Agreement. Their deliberate silence  
7 on Wyoming statutes and contractual obligations highlights a troubling intent to evade  
responsibility.

8                   **I. Wyoming Law: A Beacon of Clarity in an Evolving Legal Landscape**

9                   Wyoming stands at the forefront of digital asset legislation, providing a clear and  
10 progressive framework for ownership, contracts, and bailment relationships (W.S. § 34-29-101 et  
11 seq.). iCapital's deliberate choice of Wyoming law, meticulously implemented through the  
12 Escrow Agreement, comprehensive onboarding documents, and consistent communications with  
13 Celsius, demonstrates an unequivocal intent to secure the benefits of this robust legal structure.

14                   The Escrow Agreement establishes a classic bailment structure under Wyoming law,  
15 unambiguously vesting ownership of the escrowed digital assets with iCapital. Celsius, as bailee,  
16 holds mere possession of the assets but lacks ownership rights. This structure explicitly shields  
17 the escrowed assets from inclusion within their bankruptcy estate.

18                   **II. Debtors' Disregard for the Legal Process**

19                   Celsius' actions betray a flagrant disregard for contractual obligations and established  
20 principles of Wyoming law. Their premature conversion of iCapital's escrowed assets in defiance  
21 of the loan maturity date, coupled with their wrongful inclusion of these assets within their  
bankruptcy estate, constitute egregious breaches of contract.

22                   Furthermore, Celsius' evasive tactics and strategic silence on core issues of ownership,  
23 jurisdiction, and bankruptcy law underscore a lack of good faith participation in this process.  
24 Their calculated omission of any reference to Wyoming law in their opposition is a transparent  
25 attempt to circumvent the very framework iCapital so carefully selected. This behavior  
26 undermines iCapital's rights and casts a chilling shadow on the integrity of the bankruptcy system  
and the legal frameworks established by individual states.

1                   **III. Bankruptcy Law, Case Law, and the Protection of Property Rights**

2                   Bankruptcy law is designed to facilitate a fair reorganization for the benefit of debtors and  
3 legitimate creditors. It is explicitly not a vehicle for debtors to exploit procedural loopholes,  
4 circumvent contractual obligations, or enrich themselves at the expense of others. Section 541(d)  
5 of the Bankruptcy Code unequivocally excludes property from the bankruptcy estate where the  
6 debtor holds only bare legal title while another party retains equitable ownership. Courts have  
7 consistently interpreted this provision:

- 8                  • In re S.W. Bach & Co., 435 B.R. 866 (Bankr. S.D.N.Y. 2010): Property held in trust,  
escrow, or as part of a bailment is not within the bankruptcy estate.
- 9                  • In re MCZ, Inc., 82 B.R. 40 (Bankr. S.D. Tex. 1987): Where a debtor holds bare legal title  
as an agent or bailee, that title is valueless to the estate.

10                 These principles, coupled with Wyoming's meticulously-crafted bailment statutes, offer robust  
11 protection for iCapital's assets.

12                   **IV. The Full Faith and Credit Clause: Honoring State Laws**

13                 The Full Faith and Credit Clause of the U.S. Constitution mandates that states honor the  
14 laws and legal decisions of other states. iCapital and Celsius are Wyoming-registered entities.  
15 iCapital explicitly incorporated Wyoming law within its meticulously crafted Escrow Agreement.  
16 Declining to uphold the principles of bailment and property ownership enshrined in Wyoming  
17 law could constitute a violation of this fundamental principle and send a deeply negative signal  
18 that contractual agreements specifically designed to leverage progressive state laws can be  
19 disregarded in bankruptcy. This would erode confidence in interstate transactions and undermine  
20 the rule of law itself.

21                   **V. Justice Demands Granting Leave to File**

22                 Granting tolling due for the delays caused by complying with rule 23.1 and allowing  
23 abiding leave to file the Adversary Complaint is essential for a thorough examination of all facts  
24 and the imposition of appropriate equitable remedies. Denying the motion would set a dangerous  
25 precedent, undermining investor confidence, discouraging the use of Wyoming's progressive  
26 digital asset framework, and signaling that contractual sanctity can be disregarded within the  
27 bankruptcy process. Upholding the law reinforces fundamental principles of justice, contractual  
28 integrity, and the predictability of the legal system.

1                   **VI. Celsius' Flawed Reliance on the Class Settlement Does Not Bar iCapital's Claim**

2                   Celsius attempts to shield themselves behind a previously approved class settlement. This  
3 strategy is flawed, as it fails to consider the fundamental differences between iCapital's claim,  
4 which addresses assets held outside of the bankruptcy estate, and the general holdings addressed  
5 in the settlement, where proceeds come from the bankruptcy estate:

- 6                   • **Distinct Assets, Distinct Rights:** The class settlement focused on Celsius' general  
7 holdings, which may be considered part of the bankruptcy estate. iCapital's claim,  
8 however, concerns specifically **escrowed assets**, demonstrably excluded from the estate  
9 under Wyoming's bailment laws and Section 541(d) of the Bankruptcy Code. These are  
distinct categories of assets with distinct legal ownership rights.
- 10                  • **Overreach and a Violation of Property Rights:** Any attempt to include iCapital's  
11 escrowed assets in the class settlement constitutes a blatant overreach. These assets  
12 unequivocally belong to iCapital. Restricting their access or ownership through a  
settlement focused on Celsius' general holdings violates iCapital's fundamental property  
rights.
- 13                  • **The Injunction Should Not Apply to iCapital's Assets:** While the previous injunction  
14 may be appropriate for Celsius' general holdings, it should not prevent iCapital from  
15 pursuing its rightful claim regarding the **specifically identified** escrowed assets governed  
by Wyoming law.

16                  Granting leave to file the Adversary Complaint allows for a clear legal determination of  
17 ownership. This could lead to equitable remedies such as a constructive trust or involuntary  
18 trusteeship, ensuring iCapital's assets remain protected and inaccessible to Celsius.

19                   **Conclusion**

20                  Granting leave to file the Adversary Complaint is imperative to protect iCapital's property  
21 rights and ensure a just resolution that upholds the law. This Court has the undeniable  
22 responsibility to send a powerful message that it will not allow debtors to exploit bankruptcy  
23 proceedings as a means to evade their obligations under carefully crafted, jurisdiction-specific  
24 agreements such as the Escrow Agreement.

25                  Wyoming has established itself as a leader in digital asset legislation. Upholding its  
carefully constructed legal framework reinforces investor confidence and encourages utilization  
of its innovative statutes, ultimately fostering growth and stability in the digital asset market.  
Denying iCapital its rightful day in court would have a chilling effect, undermining the very  
principles that Wyoming's laws were designed to promote.

1 Should the Court be hesitant to grant leave to file the Adversary Complaint, Section 105 of the  
2 Bankruptcy Code empowers it to fashion alternative forms of equitable relief "necessary or  
3 appropriate to carry out the provisions of this title." In this case, such relief could take the form of  
4 an order compelling Celsius to:

- 5 • **Segregate the Escrowed Assets:** Immediately separate and identify the specific digital  
assets governed by the Wyoming bailment agreement.
- 6 • **Appoint an Independent Custodian:** Place the segregated assets under the control of a  
neutral third-party custodian until ownership is definitively resolved.

7 These actions would preserve the status quo and prevent further dissipation of iCapital's assets,  
8 ensuring a fair and equitable outcome for all parties involved.

9  
10 May 4, 2024

11  
12 Thank you for the opportunity,

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14  
15 Jason Voelker